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(By order of the Lieutenant-Governor)

G. RAGESH CHANDRA,
Special Secretary to Government.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 61/AIL/Lab./J/2010, dated 24th March 2010)

NOTIFICATION

Whereas, the Award in I.D. No.24/2001, dated 7-12-2009 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Nithya Packaging Private Limited, Puducherry and its workmen represented by Packaging Industries Democratic Workers Union over non-employment and charter of demands has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

Monday, the 7th day of December 2009

I.D. No. 24/2001

The President,
Packaging Industries Democratic
Workers Union,
Pondicherry .. Petitioner
Versus
The Managing Director,
M/s. Nitya Packaging Private Limited,
Pondicherry .. Respondent

This industrial dispute coming on 3-12-2009 for final hearing before me in the presence of the Thiruvalargal T. Tirounavocarassou, G. Mohankeerthikumar and D. Datchanamourthy, Advocate for the petitioner and Thiru R. Ilancheliyan, Advocate for the respondent, upon hearing both sides and perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No. 108/2001/AIL/L, dated 12-6-2001 for adjudication of the following industrial dispute that arose between the management of M/s. Nithya Packaging Private Limited, Pondicherry and its workmen over their non-employment:

(a) Whether the demand of the union that the workmen mentioned hereunder should be reinstated by the management of M/s. Nithya Packaging Private

Limited, Pondicherry is justified? If so, to what relief they are entitled to?

1. Senthamilzh, 2. Mathavan, 3. Usha, 4. Senthil, 5. Megavalli, 6. Devi, 7. Sumathi, 8. Kanniappan, 9. Velavan, 10. Veerappan, 11. Vadivel, 12. Mannammal, 13. Chandra, 14. Tamilselvi, 15. Mahendran, 16. Vettrivel, 17. Prakash, 18. Manimala, 19. Malar, 20. Selvam, 21. Nazir, 22. Rukumani, 23. Sumitra, 24. Selvanathan, 25. Vadivel.

(b) Whether the demand of the union that the management should revise the wages and other allowances paid to the workmen is justified? If so, to give appropriate directions?

(c) To what other relief, the union is entitled to?

(d) To compute the relief if any, awarded in terms of money if it can be so computed?

2. The petitioner union in its claim statement has averred as follows:

(a) The case of the petitioner is that the 44 workmen of the respondent company started the Packaging Industries Democratic Workers' Union in the month of November 2000. Since the respondent management disliked the formation of union, the respondent refused employment to 19 workmen and refused payment of wages to 6 other workmen from 7-12-2000. The workmen who were removed from services were the members of the union and some of them are Executive Members and they have been working in the respondent factory since the commencement of the factory *i.e.* from 1997. On 7-12-2000 itself the union gave letter to the respondent management to offer employment to the 19 workmen and to pay wages to the 6 workmen. As the respondent did not heed their request, the union issued strike notice, dated 11-12-2000 to fulfil the demands and to regularise the services of the workmen on completion of two years and to extend the benefits like E.S.I., E.P.F., and other leave benefits. The respondent management totally refused to concede any of the demand. On 19-12-2000 the petitioner union issued another strike notice raising the issue of wage revision, D.A. and other statutory benefits and the workmen struck work. In order to overcome the same the respondent management obtained an *ex parte ad interim* injunction against the nine of the workmen from the II Additional District Munsif Court *vide* Order, dated 26-12-2000, restraining them from indulging any demonstration

etc. and preventing the workmen from entering into the factory premises. The respondent has also foisted a case against 11 workmen before the Villianur Police Station in Cr. No. 56/2001. Subsequently the said injunction was vacated. Even then the respondent refused to offer employment to the 25 workmen and started engaging contract labours to run the factory. Thus the act of the respondent management falls under unfair trade practice as contemplated under the 5th Schedule of the Industrial Disputes Act, 1947. Further the respondent management has been paying a very low salary of Rs. 15 to Rs. 30 for the workmen and hence the workers also requested the management to revise their wages. But the respondent management totally refused to concede any of the demand. Since the respondent management has failed to give work to 25 workmen, the matter was taken before the Labour Officer (Conciliation) and the conciliation failed, the Labour Officer referred the matter to the Government which in turn referred the dispute to this court for adjudication on 12-6-2001.

3. In the counter statement filed by the respondent it is contended that the respondent is obliged to answer only on the terms of reference made by the Government and other averments made by the petitioner are irrelevant and liable to be dismissed. It is further contended that the Conciliation Officer has not taken into consideration the representation of the management that the persons listed in the Annexure are not the workmen of the respondent management and has not been included as terms of reference and as such the question of non-employment should be confined only with six casual workers while the non-employment of other workers should be settled only through their respective contractors. It is further contended that the matter relating to revision of wages and allowances has not been discussed in any proceedings and no opportunity was given to the respondent to justify the stand and the conciliation proceedings was closed without any formal enquiry and thus the conciliation machinery failed to discharge its function within the ambit of the Industrial Disputes Act. It is further contended that D. Velavan, S. Veerappan, A. Vadivel, M. Selvanathan, T. Vettrivel and V. Mahendran were in the employment of the respondent as casual labourers on daily wages basis with effect from 1-4-1999/2-4-1999, of whom 5 were remaining absent from 1-12-2000 and as it was reported that they were not willing to work for the

wages offered, their names were removed from the muster roll of the factory and as far as the other worker V. Mahendran is concerned, he was found preventing the other workers from going to work on 11-1-2001 and hence he was suspended with effect from 12-1-2001 and a show cause notice was issued to him, he did not give any reply and subsequently he did not attend the domestic enquiry. Therefore, the question of non-employment does not arise at all and the above persons were only temporary casuals engaged on day-to-day and daily wages basis and as those workmen entered into violent and unlawful activities, the respondent management could not take sympathetic view for offering them any work. The respondent does not have personal knowledge regarding the remaining workmen and their claim for employment and other benefits are not maintainable. It is also contended that the respondent is paying wages on par with similar industries of its kind and the Government has not fixed any minimum wages under the Minimum Wages Act and therefore, there is no justification in seeking for fixing of wages. The respondent has prayed for the dismissal of the claim with costs.

4. In order to fortify their respective contentions, on the side of the petitioner Ex.A1 to Ex.A8 and on the side of the respondent Ex.B1 to Ex.B5 were marked with consent.

5. Now the points for consideration are:

(1) Whether all the 25 workmen referred under the dispute are employees of the respondent management?

(2) Whether the employees of the respondent management are entitled for reinstatement with attendant benefits?

(3) Whether the petitioners are entitled for fixation of wages?

Point No. 1:

6. There is no dispute that the respondent management commenced its factory in January 1997. There is also no dispute that 44 workmen started a Trade Union in November 2000 and the same was also informed to the respondent management on 7-12-2001 as seen from Ex.A1. There is also no dispute that as some of the workmen struck work on 7-12-2000, the management dismissed 19 workmen from service and refused payment to 6 workmen. These 25 workmen have

sought for reinstatement. But as the respondent refused to give them work, the matter was taken up before Labour Officer (Conciliation), but as the conciliation failed, the matter has been referred to this court. The petitioner would claim that all the 25 workmen referred in the reference are employees of the respondent management since January 1997. On the other hand the respondent would state that only 6 workmen out of the said 25 were in their muster rolls as casual workers on daily wages while the rest of the workmen are total strangers to the respondent management. At the same time the respondent management would state at paragraph 2 of the counter statement that the non-employment of those individuals has to be settled only through the respective contractors. In order to establish that out of 25 workmen only 6 workmen were in muster roll of the factory, the respondent has relied upon the attendance register marked as Ex.B4. The petitioner union claims that the 25 workmen are the employees of the respondent factory since its inception in January 1997, it is the bounden duty of the respondent to produce the attendance register or the muster roll right from the year 1997 before this court for better appreciation that only 6 workmen out of 25 were in the rolls and rests are not the employees of their factory. But Ex.B3 and Ex.B4 relate to the period from August 2000 i.e., after the union has been formed and the respondent management had a strong dislike towards the formation of the union. The non-production of the attendance register/muster roll from the year 1997 is fatal to the case of the respondent. Therefore, this court concludes that all the 25 workmen were employees of the respondent management and there was no latent defect on the part of the petitioner to represent the matter before this court under the Trade Union Act, 1926 and Industrial Dispute Act 1947.

This point is answered accordingly.

Point No.2:

7. The respondent management has admitted that it has removed six employees from service on the ground of absence or misconduct. The perusal of the records would go to show that the respondent management has initiated disciplinary proceedings against 6 erring employees as contemplated under law. The perusal of the records reveal that the respondent has abruptly removed its employee from service without giving them an opportunity of being heard in person after obtaining their explanation in writing. The respondent has also

not produced the copy of the show cause notice issued to those employees implicating them with any offence that required the removal from service. It is also seen from the records that the petitioner union informed the respondent management about the formation of the union under Ex.A1, the respondent has acted vindictively on the same day by refusing employment to 19 workmen and refusing wages to 6 workmen. Such an attitude of the respondent management in victimising the workmen for formation of trade union is nothing but an unfair trade practice attracting an offence punishable under section 25 T Chapter-V and Schedule-V of the Industrial Dispute Act, 1947. It is further seen from the records that Ex.B4 and Ex.B5 have not been duly certified by the Officer of the Labour Department as contemplated under law. Further the respondent has not produced any evidence before this court to show that it had extended all statutory benefits like E.S.I., E.P.F. benefits etc. to its workmen. While the respondent would state that it had no personal knowledge about 19 workmen, though it would admit that it removed six of the workmen from service for various reasons, it would state that the concerned contractors would be liable to offer employment to the 19 workmen. All these things would go to show high handedness of the respondent management and the respondent had acted vindictively in dismissing the workmen from service. Therefore, this court finds that all the 25 workmen are entitled for reinstatement in service with full back wages and all attendant benefits.

Point No. 3:

8. Though the petitioner in the claim statement would state that the respondent paid only Rs. 15 to 30 per day as wages, the respondent would state that the survival of the industry is based on the competitive price fixed in the market and the corrugated boxes manufactured by the respondent company is even manufactured by Small Cottage Industries and that the respondent pays wages to its workmen on par with small industries of its kind and therefore, there is no minimum wages fixed by the Government under the Minimum Wages Act. The respondent has not produced any concrete evidence before this court to show that the wages paid by them are on par with small industries and what was the actual pay paid by the small industries for each category of the workmen. Such a lethargic attitude of the respondent management deserves to be condemned. It is the duty of the respondent to produce before this court all the documents relating to the

payment of wages, bonus etc., to its workers. The document marked under Ex.B3 shows that the workmen have paid poor wages even Rs. 339.80 in August 2000. The respondent industry cannot expect to thrive at the cost of the labour without paying them properly. As the respondent has also not stated specifically as to what are the wages paid to various categories of its workmen, this court finds it justified that the respondent should fix proper pay scales or wages to its employees according to their categories and the length of service rendered by its workmen. This point is answered accordingly.

9. In the result, the reference is answered to the effect that the demand of the petitioner union for reinstatement of 25 workmen by the respondent is justified and the respondent is hereby directed to reinstate the 25 workmen with full back wages and consequential benefits. The respondent management is hereby directed to consider the revision of wages and other allowances to the workmen in accordance with law. No cost.

Typed to my dictation, corrected and pronounced by me in the open court on this the 7th day of December 2009.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Puducherry.

List of witnesses examined for the petitioner : Nil.

List of witnesses examined for the respondent : Nil.

List of exhibits marked for the petitioner :

Ex.A1—7-6-2007 Copy of the letter, dated 7-12-2000
by the petitioner to the respondent.

Ex.A2—7-6-2007 Copy of the letter, dated 11-12-2000
by the petitioner to the respondent.

Ex.A3—7-6-2007 Copy of the letter, dated
19-12-2000 by the petitioner to
the respondent.

Ex.A4—7-6-2007 Copy of the F.I.R. No.407/2000,
dated 20-12-2000 along with copy
of the complaint.

Ex.A5—7-6-2007 Copy of the Anticipatory Bail
Order.

Ex.A6—7-6-2007 Copy of the letter by Tamilselvi to the Superintendent of Police, dated 3-2-2001.

Ex.A7—7-6-2007 Copy of the Conciliation Report, dated 18-5-2001.

Ex.A8—7-6-2007 Copy of the notification by the Labour Department in G. O. Rt. No. 109/2001/ AIL/L, dated 12-6-2001.

List of exhibits marked for the respondent :

Ex.B1—7-6-2007 Copy of the letter by the Labour Department to the respondent, dated 24-6-2002.

Ex.B2—7-6-2007 Copy of the registration and licence of the respondent factory.

Ex.B3—7-6-2007 Copy of the Wage Register of the respondent factory for August 2000.

Ex.B4—7-6-2007 Copy of the Attendance Register for August 2000.

Ex.B5—7-6-2007 Copy of the settlement, dated 7-6-2002.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Puducherry.

**GOVERNMENT OF PUDUCHERRY
HEALTH SECRETARIAT**

(G.O. Ms. No. 30, dated 30th March 2010)

NOTIFICATION

In continuation of the extension of service beyond the date of retirement (30-9-2009) granted *vide* G.O. Ms. No. 52, dated 30-9-2009 of the Health Secretariat, Puducherry, His Excellency the Lieutenant-Governor of Puducherry is pleased to grant extension of service to Dr. S. S. Prabhu, Specialist Grade-I in TB, Government Hospital for Chest Diseases, Puducherry under second proviso to clause (d) of F.R. 56 for a further period of 6 (six) months upto 30-9-2010 in the public interest.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Health).

**GOVERNMENT OF PUDUCHERRY
CHIEF SECRETARIAT (EDUCATION-I)**
(G. O. Ms. No. 45, dated 30th March 2010)

NOTIFICATION

On attaining the age of superannuation, Thiru M.V. Mohanan Nair, Associate Professor in English, Mahatma Gandhi Government Arts College, Mahe is admitted into retirement on superannuation with effect from the afternoon of 30-4-2010.

(By order)

R. SMITHA,
Joint Secretary to Government (Edn).

**GOVERNMENT OF PUDUCHERRY
INDUSTRIAL DEVELOPMENT (POWER) DEPARTMENT**
No. A 52011/25/ID(P)D/09/P5.

Puducherry, the 30th March 2010.

ORDER

On attaining the age of superannuation Thiru V. Balraj, Assistant Engineer (Electrical), Division-VIII, Electricity Department, Puducherry is admitted into retirement with effect from the afternoon of 31-3-2010.

(By order)

S. ALPHONSE,
Under Secretary to Government (Power).

**GOVERNMENT OF PUDUCHERRY
DEPARTMENT OF PERSONNEL AND
ADMINISTRATIVE REFORMS (PERSONNEL WING)**

(G.O. Ms. No. 16/DPAR-SSII(1), dated 31st March 2010)

NOTIFICATION

On attaining the age of superannuation, the following Superintendents shall retire from service with effect from the afternoon of 31-3-2010.

- (1) M. Jayaraman, Superintendent, Office of the Deputy Inspector of Schools, Zone-I, Puducherry.
- (2) N. Subramanian, Superintendent, Directorate of Health and Family Welfare Services, Puducherry.

[By order of the Special Secretary (Personnel)]

GIDDI MRUTHYUNJAYA DURGA RAO,
Under Secretary to Government (DP&AR).